MULTIMEDIA UNIVERSITY

STUDENT ID NO

MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 1, 2016/2017 SESSION

UCP4612 – CRIMINAL PROCEDURE I

(All Sections / Groups)

17 OCTOBER 2016
Reading Time: 2.30 pm – 2.45 pm
(15 Minutes)
Answering Time: 2.45 pm – 5.45 pm
(3 Hours)

INSTRUCTIONS TO STUDENT

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes ONLY in their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.

2. This Question paper consists of 4 pages with 4 Questions only.

3. Attempt Question 1 in Part A which is compulsory. Attempt TWO out of THREE questions in Part B. The distribution of the marks for each question is given.

4. Students are allowed to bring into the Examination Hall CLEAN and ORIGINAL copy of:
   (i) Criminal Procedure Code;
   (ii) Courts of Judicature Act 1964;
   (iii) Subordinate Courts Act 1948; and
   (iv) Penal Code.

   Students are not allowed to lend or borrow statutes during the Examination.

5. Please write all your answers in the Answer Booklet provided.

PART A – COMPULSORY

QUESTION 1

(a) L and T are husband and wife. They were separately charged but jointly tried for voluntarily causing hurt to their maid. The charge against L reads as follows:

> That you, L (m), on various occasions between the 5th day of March 2013 to the 11th day of June 2013, at No. 137, Jalan 1/62, Bandar Menjalara, Kepong in the District of Sentul, in the Federal Territories of Kuala Lumpur, did voluntarily cause hurt to one Rubiyanti (f), to wit, by hitting her back, shoulders and hands with your hands and a rattan cane, and you have thereby committed an offence punishable under section 323 of the Penal Code.

The charge against T reads as follows:

> That you, T (f), on various occasions between the 5th day of March 2013 to the 10th day of June 2013, at No. 137, Jalan 1/62, Bandar Menjalara, Kepong in the District of Sentul, in the Federal Territories of Kuala Lumpur, did voluntarily cause hurt to one Rubiyanti (f), to wit, by pinching her cheek and pulling her ears, and by hitting her hands with a rattan cane, and you have thereby committed an offence punishable under section 323 of the Penal Code.

With reference to the above —

(i) Examine whether the charges against L and T were properly framed according to the law.

(10 marks)

(ii) Examine whether both L and T could and should have been jointly tried.

(10 marks)

Support your answers to (i) and (ii) above with relevant authorities.

(b) On 25th July, 2016 at about 11.30 am, two young males, one of whom was Bengis, called on Ah Kow and his father at their coffee shop at No. 15, Bunga Raya, Malacca. They said they were members of a certain gang and asked Ah Kow for RM1,500 failing which they threatened to burn the shop. Ah Kow was frightened as a result of this threat. At about 6 p.m. the same day Ah Kow's father received a phone call instructing him to send the money to a coffee shop in Heeren Street. He told Ah Kow about this and the latter then lodged a report. He went to the coffee shop at Heeren Street at about 8 p.m. accompanied by some police officers, but did not meet anyone. He then left and returned to his shop where he was met by Bengis and another young male. Bengis demanded the money from Ah Kow. Inspector Koh, who followed Ah Kow to the latter's shop, arrested Bengis. The other young male managed to escape. The prosecution is preferring a criminal charge against Bengis.

Draft the charge.

(5 marks)

Continued...

(c) Write short notes on the following:

(i) Trial jurisdiction of the Court for Children

(5 marks)

(ii) Local jurisdiction of the Sessions Court

(5 marks)

(iii) Death inquiries

(5 marks)

(Total: 40 marks)

PART B – ANSWER 2 QUESTIONS ONLY

QUESTION 2

(a) In relation to first information report (FIR), discuss the following:

(i) Whether the failure to reduce the FIR into writing is fatal to the prosecution case.

(5 marks)

(ii) Whether an accused is entitled to a copy of the FIR.

(5 marks)

(b) On 14 August 2016, a police report was lodged at Pulau Tikus Police Station. The report was lodged by one Sukah Singh, a 13 years old schoolboy. Sukah Singh alleged that at about 10.00 a.m. on 14 August 2016 he was at the Botanical Gardens waiting for a friend. A man, whom he knew as "Hamid" and who was then riding a bicycle, suddenly knocked into him from the rear, causing him to fall. According to Sukah Singh, Hamid then assaulted him and directed him to empty his pockets. He obeyed. As Hamid was about to grab the monies emptied from Sukah Singh's pocket, the latter shouted for help. Hamid quickly fled from the scene. Sergeant Seri, the officer in charge of the police station, arrested Hamid for investigation.

Examine the arrest and investigation of Hamid.

(8 marks)

Continued...

(c) Ah Wei was charged with theft in a dwelling house under s 380 of the Penal Code. The case was first mentioned on 1 April 2014 and came up for hearing for the first time on 11 August 2014. The case had since been postponed on numerous occasions. When the case finally came up for continued hearing on 11 January 2016, three prosecution witnesses had earlier given evidence. The prosecution was not ready to proceed and asked for a final postponement as the subpoenas for witnesses had not been applied for. The learned defence counsel urged the court for an order of discharge not amounting to an acquittal as this was an old case and it was traumatic for the accused if the court were to grant a further postponement. The learned defence counsel also informed the court that the complainant was no longer interested in pursuing the matter. The Magistrate after hearing the submissions from both the parties, ordered the accused to be discharged not amounting to an acquittal.

Evaluate the decision of the Magistrate.

(12 marks)

(Total: 30 marks)

QUESTION 3

(a) Write short notes on the following:

(i) Transfer of cases from one Sessions Court to another Sessions Court

(7 marks)

(ii) Transfer of cases by the prosecution before trial

(5 marks)

(b) "Where an offence for which a person is charged falls within the jurisdiction of both the Magistrate's Court and the Sessions Court and the Public Prosecutor has instituted proceeding in the Sessions Court, the Sessions Court, without the consent of the Public Prosecutor, has no power to transfer the case to the Magistrate's Court even though the Magistrate's Court has jurisdiction over the offence."

Discuss.

(10 marks)

Continued...

(c) On 7 September 2016, Muthu appeared before a Magistrate and orally complained to the Magistrate that his wife had been taken away from him by one Bala with intent to have illicit intercourse. Acting upon the complaint and without further ado, the Magistrate directed the issue of a warrant of arrest against Bala on the same day.

Evaluate the Magistrate's direction to issue the warrant of arrest.

(8 marks)

(Total: 30 marks)

QUESTION 4

(a) Distinguish between the following:

(i) Pat down search and strip search

(5 marks)

(ii) Consent to prosecute and sanction to prosecute

(5 marks)

(b) Majlis Perbandaran Hang Tuah Jaya (MPHTJ), a local authority, wishes to commence criminal proceedings in its name for offences under its by-laws, the offences being non-seizable offences. MPHTJ also wishes to appoint an advocate and solicitor to appear and conduct the prosecution of the offences.

Advise MPHTJ whether it may proceed with both of its wishes above.

(10 marks)

(c) "Sections 112 and 113 of the Criminal Procedure Code underwent a major overhaul."

Discuss.

(10 marks)

(Total: 30 marks)

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